

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

Case Nos.: I-00-20377
I-00-20282

TRENTON PARK APARTMENTS
Respondent

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-20377) served January 30, 2002, the Government charged Respondent Trenton Park Apartments with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that the violation occurred on January 28, 2002 at 3647 6th Street, S.E., and sought a fine of \$1,000.

Respondent failed to answer the Notice of Infraction within the allotted twenty (20) calendar days from service (fifteen (15) plus five (5) days for mailing pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on March 1, 2002, the administrative court

¹21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

issued an order finding Respondent in default, assessing a statutory penalty of \$1,000 pursuant to D.C. Official Code § 2-1802.04(a)(2)(A), and requiring the Government to issue a second Notice of Infraction pursuant to D.C. Official Code § 2-1802.02(f).

On March 7, 2002, Respondent filed an untimely plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2). No explanation was filed with its plea, however. The Government served the second Notice of Infraction (00-20282) on March 8, 2002, to which Respondent entered a timely plea of Deny pursuant to D.C. Official Code § 2-1802.02(a)(3) on March 15, 2002.

In light of Respondent's conflicting pleas, on March 27, 2002 this administrative court issued an order requiring Respondent to clarify its plea, as well as permitting Respondent an opportunity to submit an explanation, should it maintain its original plea of Admit with Explanation.

On April 2, 2002, Respondent's management company, William C. Smith & Co., filed a clarification of Respondent's plea, entered a plea of Admit with Explanation, and requested a reduction or suspension of any authorized fines or statutory penalties. In its explanation, Respondent explained that its management company had only recently been hired at the time of the issuance of the first Notice of Infraction, and, as such, the management company was not initially aware of the condition of the property. Respondent explained that it promptly canceled its contract with its trash hauler at the time of the admitted violation, and has entered into a new hauling contract that will be effective after the 60-day cancellation notice required to be provided to the previous hauler.

On April 5, 2002, this administrative court issued an order permitting the Government to respond to Respondent's plea and request. In its response, the Government opposed Respondent's request for a suspension or reduction. In support of its position, the Government stated: "The Governments position is, we feel that the photos will clearly show at that date and time the respondent was in violation of 21DCMR700.3 and that the respondent should be held accountable."

II. Findings of Fact

1. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 on January 28, 2002 at 3647 6th Street, S.E.
2. On January 28, 2002, Respondent failed to properly store and containerize for collection solid wastes at 21 DCMR 700.3 at 3647 6th Street, S.E.
3. On or about February 1, 2002, Respondent terminated its contract with Waste Management, its hauler at the time of the January 28th violation. Respondent has contracted with a new hauler, BFI. Respondent's contract with BFI will be effective as of April 1, 2002, which allows for a 60-day cancellation notice with Waste Management.
4. Respondent has accepted responsibility for its unlawful conduct.
5. Respondent has undertaken prompt efforts to comply with the requirements of 21 DCMR 700.3.

6. There is no evidence in the record of a past history of non-compliance by Respondent.
7. William C. Smith & Co., Inc., became Respondent's property manager on January 24, 2002. The first Notice of Infraction was served upon Respondent by the Government approximately one week later, on January 30, 2002. On March 1, 2002, this administrative court issued a default order based on Respondent's failure to timely respond to the first Notice of Infraction. Respondent's plea to the first Notice of Infraction was subsequently filed on March 7, 2002. Therefore, Respondent's plea to the first Notice of Infraction was filed approximately five weeks after it was served by the Government, and approximately one week after this administrative court issued its default order.
8. Respondent has requested a reduction or suspension of the any authorized fines or statutory penalties. The Government has opposed Respondent's request.

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on January 28, 2002. A fine of \$1,000 is authorized for a first violation of this regulation.² See 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8692 (November 10, 2000); 47

2. Respondent has requested a reduction or suspension of the authorized fine. Under the facts of this case, a reduction, although not a suspension, of the fine is appropriate. In light of Respondent's acceptance of responsibility, prompt efforts to comply with the requirements of § 700.3 and the lack of evidence in the record of a past history of non-compliance, the fine will be reduced to \$500. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.
3. Respondent has also requested a reduction or suspension in the applicable statutory penalty. Under the Civil Infractions Act of 1985, if a respondent fails without good cause to answer a Notice of Infraction within the allotted time period (fifteen (15) days from service five (5) days for mailing pursuant to D.C. Official Code §§ 2-1801.02(e) and 2-1801.05), a statutory penalty equal to the amount of the fine shall be assessed, and a second Notice of Infraction issued. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).
4. In this case, I conclude that Respondent has not demonstrated good cause for failing to timely respond to the first Notice of Infraction. Respondent has presented uncontroverted evidence that its management company started working for Respondent approximately one week prior to the issuance of the first Notice of Infraction. Respondent's plea was filed some five weeks after the first Notice of

D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

Infraction was issued -- after this administrative court issued its default order.

There is nothing in the record to explain Respondent's delayed response.

5. Accordingly, Respondent has failed to demonstrate good cause for failing to timely answer the first Notice of Infraction, and the previously assessed statutory penalty of \$1,000 shall remain in effect. D.C. Official Code § 2-1802.02(f).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine and statutory penalty in the total amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including

the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 05/15/02

Mark D. Poindexter
Administrative Judge